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SENATE

REPORT
101-111

GENESEE RIVER PROTECTION ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 931]

The Committee on Energy and Natural Resources to which was referred the bill (S. 931) to protect a segment of the Genesee River in New York, having considered the same, reports favorably with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, lines 7 through 9, strike the phrase "further the purposes of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) (referred to as the "Act") and to".

2. On page 2, line 3, strike "plan" and insert in lieu thereof, "plant".

3. On page 2, line 5, strike "Act (16 U.S.C. 1276)" and insert in lieu thereof "Wild and Scenic Rivers Act (16 U.S.C. 1276(a))".

PURPOSE OF THE MEASURE

The purpose of S. 931, as ordered reported, is to protect a 17-mile segment of the Genesee River in the State of New York.

BACKGROUND AND NEED

The Genesee River flows north from the Pennsylvania-New York border through western New York State before emptying into Lake Ontario at Rochester, New York. For 17 miles, the river runs through Letchworth State Park, where it cuts through the 300-foot deep Letchworth Gorge. Last year the New York State Assembly

S313-26.

designated the segment of the Genesee River within Letchworth State Park as a State Wild and Scenic River.

In 1952, the Army Corps of Engineers constructed the 200-foot high Mount Morris Dam near the northern edge of Letchworth State Park for flood control purposes, in response to the flooding from Hurricance Agnes. In 1987, the Corps studied the possibility of raising the height of the dam an additional 27 feet to enlarge the dam's flood control capacity. Last year, however, the Corps abandoned that proposal.

In May 1989, the Federal Energy Regulatory Commission (FERC) granted a preliminary permit to a Massachusetts corporation to study the potential of using the Mount Morris Dam for hydropower purposes. The permit authorizes studies to address the technical, environmental and economic feasibility of the proposed project, but does not authorize any construction. If FERC later approves a power license, the company would be permitted to construct an 8,300 kilowatt hydropower generating station at the dam.

Although designation of the Genesee as a scenic river by the State prohibits State agencies from licensing power facilities on the river, Federal agencies are not affected. Providing the Genesee with the protections afforded for rivers listed for study for potential addition to the National Wild and Scenic River System would preclude the construction on the river of any power project under the Federal Power Act and would preclude any other department or agency of the United States from assisting in any form the construction of any water resources project that would have a direct and adverse effect on the river. The use of the Mount Morris Dam for flood control purposes by the Corps of Engineers would not be affected by this legislation.

LEGISLATIVE HISTORY

S. 931 was introduced by Senator Moynihan on May 4, 1989. Companion legislation, H.R. 2333, has been introduced in the House of Representatives. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 931 on July 19, 1989.

At the business meeting on August 2, 1989, the Senate Committee on Energy and Natural Resources ordered S. 931, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATIONS OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 2, 1989, by a unanimous vote of a quorum present, recommends that the Senate pass S. 931, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Bradley	
Mr. Bingaman*	

Mr. Wirth
Mr. Conrad
Mr. Heflin
Mr. Rockefeller
Mr. McClure
Mr. Hatfield
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Burns
Mr. Garn
Mr. McConnell*

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 931, the Committee adopted one technical and two clarifying amendments. The technical amendment corrects the spelling of the word "plant."

The other two amendments clarify that the 17-mile segment of the Genesee River to be protected is not designated as a study river for possible addition to the National Wild and Scenic Rivers System.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Genesee River Protection Act of 1989."

Section 2 provides that the segment of the Genesee River within Letchworth State Park is to be afforded the same protections as rivers listed in section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) for study for potential addition to the National Wild and Scenic Rivers System. Section 7(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(b)) states that the "Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated * * *."

Section 2 also states that the protections afforded the river may not interfere with the Army Corps of Engineers' operation and management of the Mount Morris Dam for flood control purposes.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 4, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and National Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 931, the Genesee River Protection Act of 1989, as ordered reported by the Senate Committee on Energy and Natural Resources, August 2, 1989. CBO estimates that enacting S. 931 would have no impact on the federal budget, or on the budgets of state or local governments.

S. 931 would prohibit any further development of the segment of the Genesee River that lies within Letchworth Gorge State Park in the State of New York. Specifically, the bill would extend the protections that are afforded to wild and scenic rivers to a segement of the Genesee River, without actually adding this river segment to the National Wild and Scenic Rivers System. The U.S. Army would continue to operate and manage a flood control dam on this segment of the river, but the bill would prohibit any development of hydropower facilities.

If you wish any additional details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Fontaine, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 931. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 931, as reported.

EXECUTIVE COMMUNICATIONS

The Committee has requested legislated reports on S. 931 from the Department of Defense, the Department of the Interior and the Federal Energy Regulatory Commission. The reports from the Department of the Interior and the Department of Defense had not been received at the time the report on S. 931 was filed. When the reports become available, the Chairman will request that they be printed in the Congressicnal Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, August 3, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 14, 1989, concerning S. 931, a bill designating the segment of the Genesee River within Letchworth Gorge State Park in New York as a study area. Pursuant to your request, enclosed are 50 copies of the Commission staff analysis of the bill for the use of the Senate Committee on Energy and Natural Resources.

I appreciate your inquiry. If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

MARTHA O. HESSE.

Enclosures:

STAFF REPORT ON S. 931, 101ST CONG., 1ST SESS., A BILL DESIGNATING A SEGMENT OF GENESEE RIVER AS A STUDY AREA FOR POSSIBLE INCLUSION IN THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

On May 4, 1989, Senator Moynihan introduced S. 931, which would designate the segment of the Genesee River within Letchworth Gorge State Park as a study area for possible inclusion in the National Wild and Scenic Rivers System.

Normally, under the provisions of Section 7(a) of the Wild and Scenic Rivers Act (WSRA), the entity responsible for conducting the study and a deadline for completing the study are specified in the legislation. The proposed legislation does not identify the responsible entity nor does it establish a time frame for completing the study.

It appears that this proposed legislation would have some effect on the Commission's hydropower program. Included in the proposed study area is the Station No. 160 Project (FERC No. 2596). This is an existing hydroelectric project licensed by the Commission to the Rochester Gas and Electric Corporation. This project is operated in a run-of-river mode with an installed capacity of 340 kilowatts. Operation began in 1916 and the license will expire in 1993.

In addition, on May 4, 1989, the Commission issued a preliminary permit to Mt. Morris Hydro Partners (permittee) for a period of 3 years for the proposed Mt. Morris Dam Project. The project would utilize the existing Mt. Morris Dam, which is operated by the U.S. Army Corps of Engineers for flood control, and is also within the proposed study area. It would consist of a powerhouse containing one generating unit with an installed capacity of 8.3 megawatts. This permit does not authorize the permittee to construct any project works. Under the conditions of the permit, the permittee must obtain data and conduct studies to determine if the project is technically, environmen-

tally, and economically feasible. During the permit period the permittee maintains priority for filing a license application on the site.

Section 5(a) of the WSRA prohibits hydroelectric development within a Wild and Scenic River Study Area. Hence, the Commission could not issue an original license for the proposed Mt. Morris Dam project or any other proposed original project within the designated area. With regard to the existing Station No. 160 Project, the Commission has not addressed the issue of whether the WSRA precludes issuance of a new license for a project which existed prior to enactment of the WSRA, and for which the original license subsequently expires. The Commission may, however, issue preliminary permits for projects within a study area, depending on the specific circumstances associated with each case.

STATEMENT OF GERALD D. PATTEN, ASSOCIATE DIRECTOR, PLANNING AND DEVELOPMENT, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 931, A BILL TO PROTECT A SEGMENT OF THE GENESEE RIVER IN NEW YORK

Mr. Chairman, I appreciate the opportunity to provide your Committee with testimony on S. 931, a bill to protect 17 miles of the Genesee River where it flows through Letchworth Gorge State Park. The protection would be the same as for rivers listed in Section 5(a) of the Wild and Scenic Rivers Act; Section 5(a) lists rivers authorized by Congress for study as potential additions to the National Wild and Scenic Rivers System.

Mr. Chairman, we support enactment of S. 931. Approximately 87 miles of the Genesee River, including the segment in question, are listed in the Nationwide Rivers Inventory. This means that the segments possess natural values of such outstanding significance that they appear to qualify for the National Wild and Scenic Rivers System. That puts them in a very select group, since less than 2 percent of the river mileage in the lower 48 states is listed in the inventory. This segment flows through a highly scenic area, the sheer cliffs of the Genesee River Gorge, and over several large waterfalls. The river is a component of the New York State scenic rivers system.

The bill would, in effect, apply one of the important protective measures of the Wild and Scenic Rivers Act without actually amending the Act. As you know, the purpose of the Act is to protect the free-flowing condition and outstanding resources of certain rivers and their immediate environment. In this case, the outstanding land based resource values along this segment already are protected by virtue of being in a State park. What we are talking about then is protecting the river from Federal or Federally as-

sisted, licensed or permitted hydroelectric and water resource development projects which would adversely affect the free flowing and other instream values.

At present we are aware of only one potential project that might affect the river. On May 4, 1989, the Federal Energy Regulatory Commission issued a preliminary permit to Mt. Morris Hydro Partners to investigate the potential for developing hydroelectric power at the Mt. Morris Dam which, as the bill notes, is a flood control project operated by the Secretary of the Army. That potential project has not been developed to the point where we could evaluate what, if any, impact it would have on the river's upsteam flow values. Clearly, however, if it involved raising the Mt. Morris Dam to the point where it inundated the river in Letchworth Gorge State Park, it would destroy the free-flowing character and related resources of the river in that area.

The approach being taken in this bill, that is, to use language from the Wild and Scenic Rivers Act to protect river values but not actually amending the Act is unusual. However, it is not unprecedented. Congress has passed similar legislation to protect portions of the Snake and Salmon Rivers in Idaho in Public Law 96–312 and Public Law 100–677.

Finally, Mr. Chairman, we would note that section 2(a)(ii) of the Wild and Scenic Rivers Act provides for the inclusion of State rivers in the national system of wild and scenic rivers by designation of the Secretary of the Interior. The State of New York may wish to consider pursuing that option, which would provide protection but without the need for further legislation such as S. 931.

That concludes my formal statement, Mr. Chairman. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 931, as reported.

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